IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

Crl.MC.No. 596 of 2007()

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AGAINST THE ORDER DATED 23/02/2007 IN CMP 396/07 IN
CC.609/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR

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PETITIONER: ACCUSED:
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SMT. SUDHAMMA T.,
PARAYAKADAVIL VEEDU, KOLADATHUSSERI MURI,
THIRUVANVANDUR VILLAGE, CHENGANNUR TALUK.

BY ADV. SRI.S.HARIKRISHNAN
SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. T.N.MURALEEDHARAN PILLAI,
LATHI VILLA, ERMALLIKKARA MURI,
THIRUVANVANDUR VILLAGE, CHENGANNUR TALUK.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.P.JACOB VARGHESE
SRI.V.MANOJ KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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Crl.M.C.No.596 of 2007

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Dated this the 4th day of April 2007

**O R D E R**

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The signature in the cheque is not disputed. Notice of demand though duly received and acknowledged did not admittedly evoke any response. Cognizance was taken. In the course of the trial, the petitioner took the stand that the cheque was issued as security in a chitty transaction between the petitioner and the complainant. According to the petitioner, payments have been made as per Ext.D1 pass book in which the complainant has made entries and affixed his signatures in token of having received amounts from the accused. The complainant denied Ext.D1 and the petitioner hence made a request that the said passbook Ext.D1 may be sent to the expert. The learned Magistrate, by the impugned order, rejected the said prayer.

2. The petitioner claims to be aggrieved by the impugned order. The learned counsel for the petitioner submits that the petitioner has consistently asserted that there was a chitty transaction between the petitioner and the complainant.

To discharge the burden of the petitioner under Section 139 of the Negotiable Instruments Act, she wants to establish the fact that the complainant is not speaking the truth and he is deliberately suppressing the existence of the chitty transaction between him and the petitioner/accused. It is for this purpose that the petitioner wanted the pass book to be sent to the expert. The blank signed cheque handed over as security in connection with the chitty transaction is being misused by the complainant. This is the short and specific plea raised by the accused.

3. It is true that notice of demand did not evoke any response. It is true that the signature in the cheque and handing over of the cheque are admitted by the accused. But notwithstanding all these, in the facts and circumstances of this case - I have been taken in detail through the depositions of the witnesses - I am certainly persuaded to agree that this is a fit case where authentic evidence as to whether there was a chitty transaction between the accused and the complainant must be procured by the court for a proper disposal of the case. In this view of the matter, I am satisfied that the petition to get the alleged entries and signature of the complainant in the pass book

examined and verified by an expert must have been allowed by the learned Magistrate.

4. Appropriate safeguards can, of course, be insisted to ensure that such an application is not filed merely with the intention of protracting the proceedings.

5. In the result, this Criminal Miscellaneous Case is allowed. The impugned order is set aside. The learned Magistrate shall send the pass book (Ext.D1) to the expert for comparison. The petitioner may take all necessary steps to get the standard/admitted signatures and handwriting of the complainant with which the signatures and entries in Ext.D1 pass book has to be compared, within a period of fifteen days from this date. In the peculiar circumstances of this case, it is held that, in case the final verdict is against the petitioner, appropriate directions shall be issued to ensure that the complainant is compensated and the amount of the cheque along with interest and cost is directed to be paid to the complainant under Section 357(3) Cr.P.C.

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J**

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006